

CHAPTER 1189
Appeals and Variances

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1189.01 APPEALS TO THE BOARD OF ZONING APPEALS.

Appeals to the Board of Zoning Appeals may be submitted by any person, firm or corporation, or by any officer, board or department of the City, deeming him/herself or itself to be adversely affected by a decision of the Zoning Administrator, or by any administrative officer deciding matters relating to this Planning and Zoning Code.

1189.02 INITIATION OF APPEAL.

Applications for appeal shall be filed with the Zoning Administrator within 15 days after the date of any adverse order, requirement, decision, or determination. The application for appeal shall include reference to the decision, the provision of this Planning and Zoning Code from which the appeal is sought, and reasons for the appeal.

1189.03 PUBLIC HEARING BY THE BOARD.

When an application for appeal has been filed in proper form with the Board of Zoning Appeals and the application fee has been paid, the Zoning Administrator shall immediately place the request upon the calendar for public hearing before the Board of Zoning Appeals. The Board may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. Any person in interest may appear at the public hearing in person or by attorney.

1189.04 NOTICE OF PUBLIC HEARING.

Notice of such public hearing shall be given by first class mail to the parties making the request for the appeal and to the property owners within 250 feet of the property to which such appeal relates. Failure of delivery of such notice shall not invalidate action taken on such application. Further notice shall be given in one or more newspapers of general circulation in the city. All notices shall be made at least 10 days before the date of said public hearing. All notices shall set forth the time, place and nature of the public hearing.

1189.05 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator shall certify to the Board of Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the permit, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed by other than a restraining order granted by a court having lawful jurisdiction.

1189.06 REVIEW OF APPEAL.

The Board of Zoning Appeals shall review the appeal. To aid in their review, the Board may transmit the application to appropriate administrative departments and professional consultants for review and comment. Any reports, comments or experts opinions shall be compiled by the Zoning Administrator and transmitted to the Board prior to the time of the Board's review.

1189.07 DECISION OF THE BOARD.

Within its powers, the Board of Zoning Appeals may reverse or affirm, wholly or in part, the decision being appealed, and to that end shall have all the powers of the officers from whom the appeal is taken, and it may direct the issuance of a permit or certificate.

- (a) The Board shall render a decision on the appeal within 10 days from the date of the hearing unless an extended period of time is mutually agreed upon by the applicant and the Board. If the Board fails to act within such period of time, the appellant may determine the appeal has been denied.
- (b) The Board shall notify the appellant in writing of the decision of the Board.
- (c) The Zoning Administrator, or his/her designee, shall keep minutes of all proceedings upon appeal, showing the vote of each member thereon, and shall keep record of the Board's official actions.
- (d) Once the appellant has received the Board's decision, he/she may submit an application for a zoning certificate or conditional use certificate that complies with the Board of Zoning Appeal's decision. A copy of the Board of Zoning Appeal's decision shall be attached to the application.

1189.08 REAPPLICATION OF APPEAL.

If the appeal is denied by the Board of Zoning Appeals, the Board need not rehear the application within 6 months after the date of the decision unless new evidence is submitted.

1189.09 VARIANCES

The Planning Commission may authorize upon appeal in specific cases such variance from the terms of this Planning and Zoning Code as will not be contrary to the public interest according to the following procedures:

- (a) Application Requirements. An application for a variance shall be filed with the Zoning Administrator for review by the Planning Commission upon the forms provided, and shall be accompanied by the following requirements necessary to convey the reason(s) for the requested variance:
 - (1) Name, address and phone number of applicant(s);
 - (2) Proof of ownership, legal interest or written authority;
 - (3) Description of property or portion thereof;
 - (4) Description or nature of variance requested;
 - (5) Narrative statements establishing and substantiating the justification for the variance pursuant to subsection (c) below;
 - (6) Site plans, floor plans, elevations and other drawings at a reasonable scale to convey the need for the variance;
 - (7) Payment of the application fee as established by Council;
 - (8) A list of all property owners lying within 250 feet of any part of the property on which the variance is proposed, including their addresses and permanent parcel numbers;
 - (9) Any other documents deemed necessary by the Zoning Administrator.

The application and required documentation shall be submitted at least two weeks prior to the meeting of the Planning Commission at which the application is to be considered. Application received less than two weeks in advance of a meeting will be placed on the agenda of the next Planning Commission meeting.

- (b) Review for Completeness. Within 10 days after receiving an application for variance, the Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made and place it on the Planning Commission's agenda.

- (c) Review by the Planning Commission. The Commission shall hold a public hearing and give notice of the same. The Planning Commission shall review each application for a variance to determine if it complies with the purpose and intent of this Planning and Zoning Code and evidence demonstrates that the literal enforcement of this Planning and Zoning Code will result in practical difficulty or unnecessary hardship.
- (1) Area Variance. The following factors shall be considered and weighed by the Planning Commission to determine practical difficulty:
- A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot;
 - B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - C. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
 - D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
 - E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
 - F. Whether the property owner purchased the property with knowledge of the zoning restrictions;
 - G. Whether special conditions or circumstances exist as a result of actions of the owner;
 - H. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
 - I. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and
 - J. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this

regulation to other lands, structures, or buildings in the same district.

- (2) Use Variance. In order to grant a use variance, the Planning Commission shall determine that strict compliance with the terms of this Planning and Zoning Code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:
- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
 - B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
 - C. The hardship condition is not created by actions of the applicant;
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
 - E. The granting of the variance will not adversely affect the public health, safety or general welfare;
 - F. The variance will be consistent with the general spirit and intent of the Planning and Zoning Code; and
 - G. The variance sought is the minimum that will afford relief to the applicant.
- (d) Requests for Additional Information. The Planning Commission may request that the applicant supply additional information that the Board deems necessary to review and evaluate the request for a variance.
- (e) Additional Conditions and Safeguards. The Planning Commission may further prescribe any conditions and safeguards that it deems necessary to ensure that the objectives of the regulation(s) or provision(s) to which the variance applies will be met.
- (f) Action by the Planning Commission. The Commission shall either approve, approve with supplementary conditions as specified in subsection (e) above, or disapprove the request for variance according to the procedures established for appeals in Section 1189.07.
- (g) Term and Extension of Variance. Variances shall be nonassignable and shall expire one year from the date of their enactment, unless prior thereto,

the applicant commences actual construction in accordance with the granted variance or an extension of time has been granted by the Planning Commission. There shall be no modification of variances except by further consideration of the Board. Once the time limit pursuant to this Section has expired, a request for a variance shall be considered to be a new application for a variance and shall meet all requirements for application and review pursuant to this Section.